

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

| | | |
|---|---|--------------------|
| DOXIE MAYER |) | |
| Claimant |) | |
| VS. |) | |
| |) | Docket No. 193,286 |
| NEWMAN MEMORIAL HOSPITAL |) | |
| Respondent |) | |
| AND |) | |
| |) | |
| PHICO INSURANCE COMPANY |) | |
| Insurance Carrier |) | |
| AND |) | |
| |) | |
| KANSAS WORKERS COMPENSATION FUND |) | |

ORDER

The respondent appeals from an Award entered by Administrative Law Judge Brad E. Avery on May 25, 1999. The Appeals Board heard oral argument November 16, 1999.

APPEARANCES

Steven J. Quinn of Kansas City, Missouri, appeared on behalf of respondent and its insurance carrier. Michael G. Patton of Emporia, Kansas, appeared on behalf of the Fund.

RECORD AND STIPULATIONS

The Appeals Board has considered the record listed in the Award.

ISSUES

The issues on appeal relate to whether the Kansas Workers Compensation Fund has liability for all or any part of the benefits owed claimant. Claimant and respondent have settled. The two specific issues on appeal are (1) whether respondent kept claimant in its employ with knowledge that claimant was a handicapped employee and (2) whether the claimant would have sustained the injury "but for" her preexisting condition or, in the alternative, whether her resulting disability was contributed to by the preexisting impairment. The Administrative Law Judge found for the Fund on both issues and respondent now appeals.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record and considering the arguments, the Appeals Board concludes the Award should be affirmed.

The Board finds that respondent did not have knowledge that claimant had an impairment which would constitute a handicap. The Board makes this finding for the reasons stated in the findings and conclusions by the Administrative Law Judge. The Board agrees with and adopts those findings and conclusions as its own.

The Board also finds, again for the reasons stated in the Award, that the evidence does not establish that the injury in this case would not have occurred "but for" claimant's preexisting impairment.

The Administrative Law Judge made no finding on whether the resulting disability was contributed to by the preexisting disability. Since the Administrative Law Judge made no finding for the Board to review and since the other findings made here render this issue moot, the Board makes no finding on the contribution question.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Award entered by Administrative Law Judge Brad E. Avery on May 25, 1999, should be, and the same is hereby, affirmed.

IT IS SO ORDERED.

Dated this ____ day of December 1999.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Steven J. Quinn, Kansas City, MO
Michael G. Patton, Emporia, KS
Brad E. Avery, Administrative Law Judge
Philip S. Harness, Director